NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Hale Construction, Inc., *and* Bricklayers, Tilesetters and Allied Craft Workers, Local 3. Case 32–CA–373919

July 22, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

This is a refusal-to-bargain case in which Hale Construction, Inc. (the Respondent) is contesting the certification of Bricklayers, Tilesetters and Allied Craft Workers, Local 3 (the Union) as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on September 24, 2025, by the Union, the General Counsel issued a complaint on December 2, 2025, amended on December 23, 2025, and May 7, 2026, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 32–RC–366164. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Sections 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer to the complaint, to the amended complaint, and to the amendment to the amended complaint, admitting in part and denying in part the allegations therein and asserting affirmative defenses.

On May 22, 2026, the General Counsel filed a Motion for Summary Judgment. On May 27, 2026, the Union filed a Joinder in Motion for Summary Judgment. On May 28, 2026, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 5, 2026, the Respondent filed an opposition to the General Counsel's motion for summary judgment. The General Counsel and the Union filed replies to the Respondent's opposition on June 11 and 12, 2026, respectively.

Ruling on Motion for Summary Judgment

The Respondent admits that it has refused to bargain but asserts that it has no duty to bargain based on its contention, raised and rejected in the underlying representation proceeding, that the certification of representative is invalid because the Regional Director erred in ordering a mail ballot election.[1]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it established any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[2]

On the entire record, the Board makes the following

[1] In its answer, the Respondent denies par. 6(f) of the amended complaint, which states that at all times since July 16, 2025, based on Sec. 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. The Respondent also denies pars. 9 and 10 of the complaint, which allege that the Respondent's failure to recognize and bargain with the Union violated Sec. 8(a)(5) and (1) of the Act, and that its unfair labor practices affect commerce within the meaning of Sec. 2(6) and (7) of the Act. The Respondent further asserts, as an affirmative defense, that the certification of representative is void because the Regional Director erred in failing to conduct a manual election. These issues were stipulated to and/or fully litigated and resolved in the underlying representation proceeding. Accordingly, we conclude that the Respondent's denials of the allegations in pars. 6(f), 9, and 10 of the amended complaint and its fourth affirmative defense do not raise any issues warranting a hearing. We do, however, correct the date since which the Union has been exclusive collective-bargaining representative of the unit to September 10, 2025, the date the Regional Director issued the certification of representative.

We find no merit to the constitutional claims raised in the Respondent's answer and in its response to the Notice to Show Cause. The Respondent asserts that a hearing in this matter would violate its right to a jury trial under the Seventh Amendment to the Constitution. This argument is unpersuasive. The Supreme Court has considered, and rejected, that the Act implicates the Seventh Amendment. See *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48–49 (1937); see also *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 453–455 (1977) (reaffirming that the Act created a public right and that Congress could therefore assign the adjudication of that right to the Board without violating the Seventh Amendment).

As to its argument that Board member and administrative law judge removal protections, coupled with the Board's exercise of executive power, violate Article II of the Constitution, there is no evidence that the Respondent suffered any harm from the Act's removal protections. See *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1 fn. 4 (2023) (citing *Collins v. Yellen*, 594 U.S. 220, 257–258 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), rev'd per curiam on other grounds 598 U.S. 623 (2023)); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 148-149 (4th Cir. 2023) ("[R]egardless of how we answer the constitutional question presented by the removal provisions, we would be required to deny the petition because K & R has not asserted any harm resulting from the allegedly unconstitutional statutes.").

Thus, we find that the Respondent's affirmative defenses and response to the Notice to Show Cause are insufficient to warrant denial of the General Counsel's Motion for Summary Judgment.

[2] The Respondent's request that the complaint be dismissed is therefore denied.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a California corporation with an office and place of business located at 1842 E. Palm Lane, Manteca, California, and has performed the services of a general contractor in the construction industry.

In conducting its business operations during the past 12 months, a representative period, the Respondent purchased and received at its Manteca, California facility goods valued in excess of $50,000, directly from points located outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act.

I. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following an election conducted by mail ballot between June 24, 2025, and July 16, 2025, the Regional Director issued a Certification of Representative in Case 32–RC–366164 on September 10, 2025, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Bricklayers employed by the Employer at or from its facility located at 1842 E. Palm Lane, Manteca, CA 95336; excluding all other employees, confidential employees, office clerical employees, guards, and supervisors as defined by the Act.

On February 26, 2026, the Board denied the Respondent's request for review of the Regional Director's Decision and Direction of Election. The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

On about July 30, and September 11, 2025, the Union requested that the Respondent bargain with the Union as the exclusive collective-bargaining representative of the unit. Since about September 29, 2025, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about September 29, 2025, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).[3]

ORDER

The National Labor Relations Board orders that the Respondent, Hale Construction, Inc., Manteca, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Bricklayers, Tilesetters and Allied Craft Workers, Local 3 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

---

[3] The General Counsel's and the Union's requests for additional remedies are denied as the Board's traditional remedies are sufficient to remedy the unfair labor practice found herein.

For the reasons stated in his dissent in *Longmont United Hospital*, 374 NLRB No. 52 (2026), and in order to effectuate Sec. 10(c) of the Act, Member Prouty would grant the General Counsel's request for an order requiring the Respondent to make affected employees whole for any provable, reasonably quantifiable economic harm resulting from the Respondent's unlawful refusal to bargain. See *Longmont*, supra, slip op. at 2–5 (Member Prouty, dissenting). For the reasons stated in his concurrence in *CP Anchorage Hotel 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151 (2022), enfd. 98 F.4th 314 (D.C. Cir. 2024), Member Prouty would also grant the Union's request for a notice reading, and he would further order that the notice be distributed to employees before it is read. While he reiterates his view that notice reading and distribution should be standard for all unfair labor practices found by the Board, he also notes that these remedies are particularly appropriate where, as here, employees have been deprived of the benefit of their chosen representative because of the Respondent's unlawful refusal to bargain. In addition, Member Prouty would grant the Union's request for a bargaining schedule. See *Longmont United Hospital*, supra, slip op. at 3 (Member Prouty dissenting) (contending that a notice reading and bargaining schedule are appropriate remedies where an employer unlawfully refuses to bargain on grounds that it is challenging the union's certification).

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time Bricklayers employed by the Employer at or from its facility located at 1842 E. Palm Lane, Manteca, CA 95336; excluding all other employees, confidential employees, office clerical employees, guards, and supervisors as defined by the Act

(b) Within 14 days after service by the Region, post at its California facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 29, 2025.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 22, 2026

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Bricklayers, Tilesetters and Allied Craft Workers, Local 3 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

> All full-time and regular part-time Bricklayers employed by the Employer at or from its facility located at 1842 E. Palm Lane, Manteca, CA 95336; excluding all other employees, confidential employees, office clerical employees, guards, and supervisors as defined by the Act.

HALE CONSTRUCTION, INC.

The Board's decision can be found at www.nlrb.gov/case/ 32-CA-373919 or by using the QR

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.